Supreme Court, U. S.
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In The

# Supreme Court of the United States

October Term, 1978

No. 78-1674

L.W. BENNETT & SONS, INC.,

*Petitioner,*

*vs.*

MARCEL ANICHINAPEO, NATIONAL GRANGE MUTUAL INSURANCE COMPANY, and WORKERS' COMPENSATION BOARD,

*Respondents.*

## PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

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MARCEL ANICHINAPEO, NATIONAL GRANGE MUTUAL INSURANCE COMPANY, and WORKERS' COMPENSATION BOARD,

*Respondents.*

---

## PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

---

L. W. Bennett & Sons, Inc., respectfully prays that a Writ of Certiorari issue to review the final judgment and decree of the Court of Appeals of the State of New York entered on February 8, 1979.

## OPINIONS BELOW

The decision of the Court of Appeals of the State of New York, denying the Petitioner's motion for leave to appeal thereto, entered on February 8, 1979, is unreported and reproduced in Appendix A infra, p. A-1. The judgment and decision of the Appellate Division, Third Department, is reported at 62 A.D.2d

105 (3rd Dept. 1978) and is reproduced in Appendix B, infra, pp. A-2 — A-4. The decision of the Workers' Compensation Board, filed in this case on July 29, 1977, is unreported and reproduced in Appendix C, infra, pp. A-5 — A-6.

## JURISDICTION

The final judgment and decision of the Court of Appeals of the State of New York was entered February 8, 1979; this Petition was filed within ninety (90) days of that order. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257(3).

## QUESTIONS PRESENTED

I. Does Section 14-a of the Workmen's Compensation Law of the State of New York apply to, and does the New York State Workers Compensation Board have jurisdiction over the employment of a North American Indian of the Algonquin Tribe who is a resident and domiciliary of Canada or do the applicable Federal Laws exclusively apply thereo?

## FEDERAL STATUTES INVOLVED

1. 8 U.S.C. §1359

Nothing in this title shall be construed to affect the right of American Indians born in Canada to pass the borders of the United States, but such right shall extend only to persons who possess at least 50 per centum of blood of the American Indian race.

2. 29 U.S.C. 203 (1)

"Oppressive child labor" means a condition of employment under which (1) any employee under the age of sixteen years is employed by an employer (other than a parent or a person standing in place of a parent employing his own child or a child in his custody under the age of sixteen years in an occupation



other than manufacturing or mining or an occupation found by the Secretary of Labor to be particularly hazardous for the employment of children between the ages of sixteen and eighteen years or detrimental to their health or well-being) in any occupation.... The Chief of the Children's Bureau [Secretary of Labor] shall provide by regulation or by order that the employment of employees between the ages of fourteen and sixteen years in occupations other than manufacturing and mining shall not be deemed to constitute oppressive child labor if and to the extent that the Chief of the Children's Bureau [Secretary of Labor] determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being.

3. 7 U.S.C. §433

For the purposes of all classification and administration of Acts of Congress, Executive Order, administrative orders, and regulations pertaining to—

(a) fox, rabbit, mink, chinchilla, marten, fisher, muskrat, karakul and all other furbearing animals raised in captivity for breeding or other useful purposes shall be deemed domestic animals;

(b) such animals and the products thereof shall be deemed agricultural products; and

(c) the breeding, raising, producing, or marketing of such animals or their product by the producer shall be deemed an agricultural pursuit.

## STATE STATUTES INVOLVED

1. Labor Law of the State of New York §131 (3) (f)

A Minor fourteen or fifteen years of age may be employed in farm service, when attendance upon instruction is not required by the education law, provided such minor presents a farm work permit issued in accordance with the education law. Such permit shall be valid only when signed by the employer and it shall not be valid for work in or in connection with a factory.

2. Education Law of the State of New York, §3226

1. A farm work permit may be issued to a minor fourteen or fifteen years of age authorizing employment in farm service. . . .

2. To obtain a farm work permit a minor shall present to the issuing officer the following:

a. Evidence of age;

b. Written consent of the parent or guardian; and

c. A certificate of physical fitness.

3. Such permit shall be valid only when signed by the employer and subject only to the condition that it shall not be valid for work in connection with a factory.

3. Workmen's Compensation Law of the State of New York, §14-a

1. Compensation, death benefits, and awards to the Commissioner of Taxation and Finance in accordance with subdivision nine of section fifteen and section twenty-five-a, as provided in this article, shall be double the amount otherwise payable if the injured employee at the time of the accident is a minor employed, permitted or suffered to work in violation of any provision of the labor law-or in violation of any rule heretofore or hereafter adopted by the board of standards and appeals



pursuant to subdivision six of section one hundred thirty-three of said law. . . .

2. The employer alone and not the insurance carrier shall be liable for the increased compensation, increased death benefits, or awards to the Commissioner of Taxation and Finance provided for by this section. Any provision in an insurance policy undertaking to relieve an employer from such increased liability shall be void.

## STATEMENT OF THE CASE

### A. *Procedural History*

The within case was commenced by the Petitioner herein by its filing its Report of Injury on July 15, 1974, of a work-related accident, which occurred on July 6, 1974, wherein an employee, Marcel Anichinapeo, suffered a severe left hand injury.

The Petitioner, a mink raising business located in Victor, Ontario County, New York, has been in operation since 1957. For the past fifteen (15) years, this corporation has employed Indians of the Algonquin Tribe, Citizens of Canada, from the Amos and Lac Simon reservations (near Louvicourt, Quebec, Canada) because of their basic skill, knowledge of and ability to handle, care for and skin this type of animal. The Indians are employed both full and part-time, seasonally and year round.

On or about June 18, 1974, Marcel Anichinapeo, a fifteen (15) year old Algonquin Indian from Lac Simon, Quebec, Canada, had Simon La Croux bring him and his brother, Simon Anichinapeo, to the Petitioner and ask for employment. Because of his inability to speak English, Marcel Anichinapeo was directed to speak with Mary Jane Smith, a permanent Indian employee of the Petitioner, at which time he lied to Ms. Smith and stated that he was sixteen (16) years of age, when, in fact, this was not true. Based upon the foregoing falsehood, Marcel Anichinapeo

was hired by the Petitioner as a laborer and he commenced work on June 20, 1974.

On July 6, 1974, Marcel Anichinapeo sustained injuries to the four fingers of his left hand while working. On July 22, 1974, the first payment of workmen's compensation was accordingly mailed to him. Thereafter, numerous hearings occurred, with the ultimate finding by the Referee of Illegal Employment under Section 14-a of the New York Workmen's Compensation Law. The finding resulted by reliance solely on the requirements of the applicable provisions of New York laws, to wit: Labor Law, §131 (3) (f) and Education Law, §3226 and without consideration of the worker's willful falsehood as to his age. The conflicting applicable Federal laws were not applied. Under the foregoing New York statutory provisions, the Petitioner was *required* to obtain a work permit from Marcel Anichinapeo whereas the applicable Federal laws did not impose such a requirement.

The Workmen's Compensation, by its written Memorandum Decision dated July 29, 1977, affirmed the Referee's determination of Illegal Employment. Appendix C, infra. Thus, the Petitioner itself was required to pay compensation to Marcel Anichinapeo of which sum constituted double compensation. As noted in the Memorandum Decision, Appendix C, infra, the Petitioner has consistently maintained throughout the proceedings that the New York Workmen's Compensation Law is inapplicable to the facts presented herein in view of the preemption by the Federal Government in areas relating to North American Indians who are residents and domiciliaries of Canada and in view of the discrepancy and conflict between the applicable state and federal laws relative thereto.

The Petitioner timely filed its Notice of Appeal from the said decision of the Workmen's Compensation Board to the Supreme Court of the State of New York, Appellate Division, Third Department, who, subsequently, unanimously affirmed the decision of the Workmen's Compensation Board but admitted



that there was a conflict between the State and Federal statutes in its decision dated December 14, 1978, a copy of which was served on the Petitioner on December 15, 1978. Appendix B, infra.

Thereafter, the Petitioner served its Notice of Motion and supporting papers to the Court of Appeals of the State of New York, for leave to appeal thereto on or about January 2, 1979, said motion being brought under New York CPLR §5602(a) (1), on the grounds that the Court should review the case because of the federal statutory questions presented. The Court of Appeals denied the Petitioner's motion by its decision dated February 8, 1979. Appendix A, infra.

### B. *The discrepancy between and conflict of federal and state laws*

The Petitioner herein, as previously stated, relied upon the applicable Federal statutory provisions in employing Marcel Anichinapeo, a North American Indian of the Algonquin Tribe who is a resident and domiciliary of Canada. 20 U.S.C. 203(1) permits the employment of minors the claimant's age in occupations other than mining and manufacturing when the same is confined to periods which do not interfere with attendance at school. The claimant, Marcel Anichinapeo, was employed by the Petitioner in a mink raising business which is deemed an agricultural pursuit under 7 U.S.C., 433. It is undisputed that the period of employment of the claimant was outside the regular schooling. Marcel Anichinapeo commenced work at the Petitioner's place of business on June 20, 1974, and the undisputed proof discloses that school attendance for that year terminated on June 14, 1974. Thus, it is indeed clear that the Petitioner violated *no* provision of the Federal Law by employing him and indeed, no allegations of violations of Federal Law have ever been made. Yet, the New York Court of Appeals, in denying the Petitioner's motion for leave to appeal thereto, has declined to even address the question of the applicability of

Federal Law and has let stand the decision of the Appellate Division, Third Department which determined that the state statutory provisions applied even though the Appellate Division, Third Department, admitted that there was a conflict between the State and Federal statutes. Under the state Labor Law §131, a minor the claimant's age may be employed in farm service when attendance for instruction in school is not required by the state Education Law. The state Education Law §3226 requires a minor of the claimant's age to secure a work permit and submit the same to his employer for signature. Clearly, the foregoing requirement of the work permit creates a discrepancy between Federal and State laws, since Federal Law requires no said work permit to be obtained. Furthermoré, under the State Workmen's Compensation Law, Section 14-a, the failure to obtain the said work permit is considered illegal employment requiring the payment of double compensation to a minor injured in the course of his employment. Additionally, the said State Law specifically states that the employer, and not the insurance carrier, shall be liable for the payment of the increased payment.

Indeed, it is ironic that an employer should be penalized for its reliance upon and conformity with the Federal Laws and decisions of the United States Supreme Court which it always believed to govern in the employment of an Algonquin Indian who is a resident and domiciliary of Canada. Clearly, the State Laws are inapplicable whereas in this instance, Federal Law has exclusive control over North American Indians born and domiciled in Canada. The Petitioner herein submits to the Court that the Court of Appeals of the State of New York erred in denying the Petitioner leave to appeal thereto.



## REASONS FOR GRANTING THE WRIT

**1. The decisions of the state courts below in this case are totally inconsistent and in conflict with previous decisions of this Court concerning the exclusive jurisdiction of the Federal Government in matters relating to North American Indians.**

The instant case was disposed of by the Worker's Compensation Board and the Appellate Courts of the State of New York by applying State Law only. Their decisions ignored the applicable Federal Laws and previous decisions of this Court, thus requiring this Court to grant the Writ of Certiorari. The Petitioner submits that important and significant federal questions are presented in the instant case and the refusal of the State Courts to apply Federal Law clearly is not in accordance and conformity with previous decisions of this Court.

It is a well-established principle of law that the Federal Government has exclusive jurisdiction over North American Indians except where the United States Congress has specifically delegated the authority to act in a particular area to the States. See *Oneida Indian Nation vs. County of Oneida*, 414 U.S. 661 (1974); *United States vs. Sandoval*, 231 U.S. 28 (1913); *United States vs. Forness*, 125 F. 2d 928 (2nd Cir. 1942); *United States vs. Boylan*, 265 F 2d 165 (2nd Cir. 1920); *Andrews vs. State of New York*, 192 Misc. 429 (Ct. Cl. 1948); *United States vs. City of Salamanca*, 27 F. Supp. 541 (1939), *cert. denied* 316 U.S. 694 (1942); and the classic case in the area of Indian affairs, *Worcester vs. Georgia*, 6 Pet. (U.S.) 515 (1832).

There has been *no* delegation of any authority by Congress to the State of New York over Algonquin Indians born and domiciled in Canada. The only delegation of authority to the State of New York has been over the Indians of the Six Nations of the Iroquois (Onondagas, Mohawks, Senecas, Oneidas, Cayugas, and Tuscaroras), of which the Algonquin Tribe is *not* a member. In *Andrews vs. State of New York*, supra. at 433, even

though the unique relation of the Six Nations with the State of New York was recognized, it was held that the "paramount power in Congress is applicable to the affairs of the Six Nations within New York State and has never been relinquished". Thus, unless specific authority to act in a particular area has been given to a State, Congress has the sole and exclusive jurisdiction in the area of all Indian affairs. Clearly, no delegation of authority over the Algonquin Tribe, of which the claimant, Marcel Anichinapeo, is a member, has been made by the Congress to the State of New York and thus the only applicable laws herein are those enacted by Congress.

Clearly, from all the foregoing cases cited hereinabove, it was the intent of Congress to assure that Indian relations would remain within the Federal province. In the instant case, the claimant, Marcel Anichinapeo, was fifteen (15) years of age when he was employed as a laborer by the Petitioner herein. Under the applicable provisions of the Federal statute (to wit, 29 U.S.C. 203(1)0, employment of minors under the age of sixteen (16) years is permitted in occupations other than mining and manufacturing, so long as it is confined to periods which will not interfere with attendance at school. The claimant, Marcel Anichinapeo, in the instant case was employed in an agricultural pursuit (7 U.S.C. §433), whereby he is deemed a farmer. Evidence was presented and is undisputed that the period of employment was outside the regular schooling. The claimant commenced work for the Petitioner herein on June 20, 1974, and school attendance for that year ended on June 14, 1974. Clearly, as pointed out previously, the Petitioner violated no provision of any Federal Law by employing the claimant and indeed, no allegation of violation thereof has ever been made. Yet the State Appellate Courts, in affirming the decision of the Workers' Compensation Board, did not apply Federal Law, in complete disregard of prior decisions of this Court. (See cases cited hereinabove.)



The State Courts instead, erroneously applied New York State Law to the facts presented herein. Under Section 131 of the Labor Law of the State of New York, a minor of fourteen (14) or fifteen (15) years of age may be employed in farm service when attendance for instruction in school is not required by the New York State Education Law. Section 3226 of the New York State Education Law required that a minor of the claimant, Marcel Anichinapeo's age, (to wit, fifteen (15) years) secure a work permit and submit the same to his employer. Failure to secure a work permit and present the same to the employer results in illegal employment. Under Section 14-a of the Workmen's Compensation Law of the State of New York when a minor illegally employed is injured in the course of his/her employment, disability compensation payable to the said minor is doubled, with the employer alone liable to pay the said increased compensation even though the employee may have intentionally lied to the employer relative to his age.

Clearly, there is a major discrepancy between the applicable Federal Laws and the applicable State Laws herein. The State Laws require a work permit be obtained, with grave consequences for failure to do so, and yet, the Federal Laws require none be obtained. The Petitioner herein submits that the foregoing conflict of laws mandates the application of the paramount Federal Law. Clearly, where the Federal and State Laws conflict as to the requirements to be imposed upon an Algonquin Indian residing and domiciled in Canada, the applicable Federal Law must prevail in view of the decision of this Court cited hereinabove. Furthermore, any such additional restrictions imposed by the State of New York would place additional restrictions on the unique rights held by North American Indians born and domiciled in Canada, which were incorporated by early treaties and subsequently by Federal Law in 8 U.S.C. §1359.

Therefore, the Petitioner herein submits that the State Courts below erroneously held that an award of double compensation pursuant to Section 14-a of the Workmen's Compensation Law of the State of New York, which incorporates the New York Labor Law Section 131, does not intrude into the exclusive jurisdiction of the Federal Government in areas relating to the affairs of North American Algonquin Indians.

**2. This case presents significant federal issues not previously passed upon by this Court.**

The instant case was disposed of by the Worker's Compensation Board and affirmed by the State Appellate Courts, by applying New York statutory provisions and without regard to the applicable Federal Law. Thus, this case places in issue the question of whether this Court is going to permit a State Court's determination to govern, thereby deciding that issues relating to North American Indians are no longer governed by paramount Federal Law. This Court has not previously directly passed upon the issues presented herein; their national significance cannot and should not be minimized both to employers and North American Indians.

The importance of the issues presented herein affects all the North American Indian tribes, as well as their employers. Clearly, the restrictions placed upon those minors who are North American Indians living in both the United States and Canada who seek employment in New York State, intrude into an area of jurisdiction the Federal Government has reserved to itself. Furthermore, the burden placed upon small businesses and farms such as the Petitioner's is onerous. They cannot solely rely, as the Petitioner did, on the representation of a North American Indian that he or she is of the age of sixteen (16) years or older. Clearly, the employer is obligated to ascertain from the Canadian government the Indian's birth certificate, a task most difficult since the record-keeping files on the Indian tribes is



scant at best. Thus, the most likely and certainly, the safest result is for an employer simply not to employ any North American Indian who is a resident and domiciliary of Canada. Clearly, the foregoing result would be a most undue hardship on the Petitioner, a mink farm located in rural Upstate New York. North American Indians of the Algonquin Tribe, situated in rural Quebec Province, Canada, are employed by the Petitioner because of their basic skill, knowledge and ability to handle, care for and skin this type of animal. Clearly, the additional restrictions and double penalties on the Canadian Indians and their New York employers is in direct conflict with applicable Federal statutes and intrudes into the Federal Government's exclusive jurisdiction in areas of North American Indian affairs. Furthermore, this Court has never directly addressed the issue presented herein: Has the Federal Government retained its exclusive jurisdiction to act in areas concerning North American Indians of the Algonquin Tribe who are residents and domiciliaries of Canada since there has been no delegation to the State of New York to act in the particular area involved herein? The Petitioner submits that this Court's decisions in related areas involving North American Indians, clearly establish that the Federal Government has exclusive jurisdiction over the Indians unless it has specifically delegated to the States the authority to act in a particular area. It, therefore, necessarily follows that since *no* Federal Law or prior decision of this Court has made such a delegation, that the Federal Government has retained its exclusive jurisdiction and the only applicable laws relating thereto are the Federal statutes. Since the Petitioner herein violated no Federal statute by employing the claimant, Marcel Anichinapeo, a North American Indian who is a resident and domiciliary of Canada, and, no allegations of any such violations were ever made, clearly this Court should grant the Writ due to the great impact on so many persons of the issues presented herein.

## CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Petition for a Writ of Certiorari be granted.

Respectfully submitted,

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## Appendices

## APPENDIX A

STATE OF NEW YORK
COURT OF APPEALS

At a session of the Court, held at Court of Appeals Halls in the City of Albany on the 8th day of February, 1979.

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3 Mo. No. 71

In the Matter of the Claim for
Compensation Made by Marcel Anichinapeo,

*Respondent*

*vs.*

L.W. BENNETT & SONS, INC., Employer,

*Appellant*

NATIONAL GRANGE MUTUAL INSURANCE CO., Insurance Carrier,

*Respondent*

WORKMEN'S COMPENSATION BOARD,

*Respondent*

---

Motion for leave to appeal denied.

## APPENDIX B

SUPREME OF THE
STATE OF NEW YORK
APPELLATE DIVISION
THIRD JUDICIAL DEPARTMENT

PRESENT: MAHONEY, P.J., SWEENEY, KANE, STALEY, JR. and HERLIHY, J.J.

---

3 Mo. No. 71

In the Matter of the Claim for
Compensation Made by Marcel Anichinapeo,

*Respondent*

*vs.*

L.W. BENNETT & SONS, INC., Employer,

*Appellant*

NATIONAL GRANGE MUTUAL INSURANCE CO., Insurance Carrier,

*Respondent*

WORKMEN'S COMPENSATION BOARD,

*Respondent*

---

Claimant, a 15-year-old Algonquin Indian from Canada, was hired to work as a laborer at the Employer's mink farm located in this state. He suffered severe work-related accidental injuries to his left hand and filed for benefits. Following numerous hearings, the Referee made an award upon a finding of illegal employment under Section 14-a of the Worker's Compensation Law based upon the Employer's failure to obtain a work permit for claimant, who was less than 16 years of age, as required by





Section 3226 of the Education Law. The Board affirmed and this appeal ensued.

The dispositive issue on this appeal is whether Congress has pre-empted the field as to all questions pertaining to Indians, thereby making the issues in this case exclusively referable to federal law. We hold that it has not.

The jurisdiction of the Federal Government over Indian matters is exclusive except to the extent that Congress has given its consent to the states to exercise their jurisdiction (*Oneida Indian Nation v. County of Oneida*, 414 U.S. 661, 670-674, 678-682; *Heckman v. United States*, 224 U.S. 413). Section 233 of Title 25 of the United States Code specifically confers upon the courts of this State jurisdiction in civil actions and proceedings between one or more Indians and any other person to the same extent as in other civil actions and proceedings as defined by the laws of this State. Pursuant to this provision, Section 5 of the Indian Law states that "any action or special proceeding between ... one or more Indians and any other person may be prosecuted and enforced in any court of the State to the same extent as provided by law for other actions and special proceedings." Since the Workers' Compensation Law was intended to apply to all those whose employment has sufficient contacts with this State so that it may be said that their employment is located here (*Nashko v. Standard Water Proofing Co.*, 4 N.Y. 2d 199), claimant clearly would have been entitled to recover under the statute if he were not an Indian. Accordingly, under the broad delegation of jurisdiction contained in Section 233 of Title 25 of the United States Code and Section 5 of the Indian Law, we conclude that Indians employed in New York are entitled to proceed under the Workers' Compensation Law in the absence of some conflict with paramount federal law.

*Appendix B*

The Employer relies upon what it contends is a discrepancy between the age requirements of the federal Fair Labor Standards Act and the Labor Law and Education Law. Section 203(1) of Title 29 of the United States Code provides that the employment of children between the ages of 14 and 16 in occupations other than mining and manufacturing, during periods which will not interfere with their schooling, shall not constitute oppressive child labor, while the New York statutes (Labor Law, §131, subd. 3, par. [f]; Education Law, §3226(1)) require that a work permit be obtained under similar circumstances. We perceive no conflict between these provisions which would suggest that an award of double compensation pursuant to Section 14-a of the Workers' Compensation Law, which incorporates Section 131 of the Labor Law, intrudes into the exclusive jurisdiction of federal law over Indian matters.

The decision should be affirmed, with costs.



**APPENDIX C**

STATE OF NEW YORK
WORKMEN'S COMPENSATION BOARD

PRESENT: MULE, Presiding, KROEGER, and CHRISTMAN

---

3 Mo. No. 71

In the Matter of the Claim for

Compensation Made by Marcel Anichinapeo,

*Claimant*

*vs.*

L.W. BENNETT & SONS, INC.,

*Employer*

NATIONAL GRANGE MUTUAL INSURANCE CO., Insurance Carrier

---

Employer's attorneys contend the Workmen's Compensation Board lacks jurisdiction of both the Claimant who is an Algonquin Indian, a resident of Canada and of the subject matter of this case. Federal Law and treaties pre-empted the field involving an Algonquin Indian who is a resident of Canada, rights of the Employer under the New York State Constitution and the United States of America have been violated in that the proceedings and award have deprived Employer of due process of law and the equal protection of the Laws.

Claimant, then a 15 year old laborer, on July 6, 1974, sustained injury to four fingers of the left hand resulting in amputations of index, middle and ring and fifth fingers of the hand. Employer, Lester W. Bennett, testified he employs Indians from Canada when he found they were good at taking care of, catching and

skinning animals, claimant, an Algonquin Indian came down on the 18th, or 19th of June, 1974, and started to work for him on the 20th. Henry A. Hill, Indian Defense League of America Executive Chairman, testified claimant is a North American Indian, a group indigenous to both the United States and Canada, allowing free border crossing.

The Board Panel finds that Claimant worked in New York for a New York employer and is covered under the New York State Workmen's Compensation Law.

Accordingly, the Referee decision is AFFIRMED. The case is closed.

All concur.

Supreme Court, U. S.
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OCTOBER TERM, 1978

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*Petitioner,*

*against*

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*Respondents.*

## BRIEF IN OPPOSITION TO CERTIORARI ON BEHALF OF WORKERS' COMPENSATION BOARD

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IN THE

# Supreme Court of the United States

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L. W. BENNETT & SONS, INC.,

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MARCEL ANICHINAPEO, NATIONAL GRANGE MUTUAL INSURANCE COMPANY, and WORKERS' COMPENSATION BOARD,

*Respondents.*

## BRIEF IN OPPOSITION TO CERTIORARI ON BEHALF OF WORKERS' COMPENSATION BOARD

### Opinions Below

The decision of the Appellate Division, Third Department, affirming the decision of the Workers' Compensation Board is reported at 65 A D 2d 105, 411 N.Y.S. 2d 414 (Dec. 14, 1978) and is reproduced as Appendix B to the petition. The denial of leave to appeal by the Court of Appeals is noted at 46 N Y 2d 709 (Feb. 8, 1979) and is reproduced as Appendix A to the petition.

### Jurisdiction

The jurisdiction of this Court to review the order below rests on 28 U.S.C. § 1257(3).

## Questions Presented

Is New York Workers' Compensation Law § 14-a pre-empted by federal law as to Indian affairs?

## Facts

Respondent Marcel Anichinapeo, a 15-year-old Algonquin Indian from Quebec, Canada, was hired to work at the petitioner's mink farm in New York. In the course of his work he received severe injuries to his left hand and filed for Workers' Compensation benefits under the New York Workers' Compensation Law § 14-a which provides for double compensation in certain cases such as where there is also a violation of state law by the employer. It is not disputed now that petitioner had failed to obtain a work permit for Anichinapeo, who was under 16 years, as required by New York Education Law § 3226. This resulted in double compensation.

The Workers' Compensation Board found as above and held that New York law applied as to requiring a work permit. The Appellate Division decision found no pre-emption by Congress of Federal law as to Indian affairs.

## Reasons Why the Writ of Certiorari Should be Denied

At the outset it should be noted that claimant, Marcel Anichinapeo, is a respondent herein and petitioner corporation is seeking to invoke principles applied and laws passed for his benefit to deprive him of his Workers' Compensation. There is no claim any Indian law provides any benefits.

The opinion below recognized that the jurisdiction of the Federal Government over Indian matters is exclusive except to the extent that Congress has specifically given its



consent to New York to exercise jurisdiction. The cases cited by petitioner are concerned with protecting the rights of Indians, not depriving them of rights for the benefit of their non-Indian employers.

25 U.S.C. § 233 gives jurisdiction to New York over Indians in these civil proceedings without any exceptions. 8 U.S.C. § 1359, cited by petitioner, only applies to right of American Indians born in Canada to pass the border freely, something that has nothing to do with the instant case. See *Atkins* v. *Saxbe,* 380 F. Supp. 1210, 1219 (D. Me. 1974). It does not protect petitioner corporation from paying Workers' Compensation to an injured employee who happens to be a Canadian Indian. It is not at all clear Anichinapeo is even an American Indian.

## CONCLUSION

**The petition for a writ of certiorari should be denied.**

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Respectfully submitted,

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